

*To Sion H. Rogers.*

RALEIGH, Mar 26/66.

I call to your attention Chap. 3 Sec. 13 Rev. Code, providing for appointing State Geologist.

The office became vacant in 1864 by the death of Professor Emmons, and on the 28th Nov. 1864 W. C. Kerr was appointed by the Govr.

Did the Govr. have authority to fill such vacancy?

If the Govr. did have the power the question arises whether the incumbent is still in office by virtue of said appointment.

He avers that he has never taken the oath to support the Constitution of the Confederate States, and that consequently his office was not vacated under the ordinance of the 19th Oct. 1865. It is admitted he did not take the oath to support the Constitution of the United States, as a qualification to said office. Chap. 76 Sec. 5 Rev. Code requires every officer before entering on the execution of his office to take an oath to support the Constitution of the United States.

The preamble to the ordinance of our Convention, ratified 19th Nov. last page 63, declares that no one can rightfully claim any vested interest in any office until he shall have taken an oath to support the Constitution of the United States.

Are the Supt. of Common Schools and State Geologist officers required to take an oath to support the Constitution of the U. S.?

In view of all these facts is Mr. Kerr State Geologist—or is he entitled under his appointment in 1864, now to take the oath of his office? and demand induction into office?

You will see that no form of oath of office for State Geologist is prescribed in the Revised Code.

An early answer is desirable. Should you be in doubt on the question presented, in what way can the question be brought up so as to be decided by the Supreme Court at its next session?